Supreme Court, U. S.
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80-969

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

NO.

GEORGE FIRESTONE, as Secretary of State of Florida, DOROTHY GLISSEN, as Director of Division of Elections, State of Florida, and ROBERT HART, Chairman of Florida Elections Commission, ANNE KELLY, ROBERT HUCKSHORN, SAMUEL SHORESTIN and FLORENCE NEIDIG, Members of Florida Elections Commission.

Petitioners,

vs.

DADE VOTERS FOR A FREE CHOICE, a Political Committee and THE FLORIDA RESTAURANT ASSOCIATION, INC.,

Respondents.

APPENDIX

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LET'S HELP FLORIDA, a Political Committee, and Paul M. Bruun, Plaintiffs-Appellees,
v.
Jesse M. McCRARY, Jr., as Secretary of State of Florida, et al., Defendants-Appellants.

DADE VOTERS FOR A FREE CHOICE, a Political Committee, and the Florida Restaurant Association, Inc., Plaintiffs-Appellees,
v.
George FIRESTONE, Secretary of State of Florida, et al., Defendants-Appellants.

Nos. 78-2497, 79-2091

United States Court of Appeals, Fifth Circuit.

July 11, 1980.

Appeals from the United States District Court for the Northern District of Florida.

Before THORNBERRY, FRANK M. JOHNSON, Jr. and HENDERSON, Circuit Judges.

THORNBERRY, Circuit Judge:

In these consolidated cases we must decide whether Florida statutes that restrict the size of contributions to a single political committee in a referendum election violate the first amendment

rights of persons who want to contribute more than the maximum amount allowed by the statutes. Because campaign contributions implicate important first amendment rights and because Florida has shown no sufficiently important interest to justify restricting the contributions in a referendum election, we affirm the district court decisions declaring these statutory restrictions unconstitutional.

I. Facts.

Let's Help Florida is a political committee organized and registered under Florida law for the express purpose of conducting "a public education campaign urging the passage of a constitutional amendment which will legalize casino gambling in Southern Florida." The committee waged a petition drive under the initiative provisions of the Florida

constitution in an effort to place the casino gambling proposal on the ballot in the November 1978 election. The committee does not support any individual candidate.

The Florida legislature enacted a comprehensive election code effective January 1, 1978. Section 106.08(1)(d) of the code restricts the size of contributions to a single political committee like Let's Help Florida:

> (1) No person or political committee shall make contributions to any candidate or political committee in this state, for any election, in excess of the following amounts:
>
> . . . . .
>
> (d) To any political committee in support of, or in opposition to, an issue to be voted on in a statewide election, $3,000.

The election code does not restrict the number of contributions a person can make to different political committees,

nor does the code restrict the total amount of independent direct expenditures that a person can make without control by, coordination with, or consultation with any candidate, committee, or agent thereof. Fla.Stat.Ann. § 106.011(5) (West Supp. 1980). Political committees must disclose a variety of information upon registration. Fla.Stat.Ann. § 106.03 (West Supp. 1980). Committees must also disclose information about all contributors, even those who make very small contributions. Fla.Stat.Ann. § 106.07 (West Supp. 1980). Various civil and criminal penalties apply for violations of the election code.

In February 1978 Let's Help Florida and a person desiring to contribute more than the statutory maximum amount filed suit against the secretary

of state, attorney general, director of the division of elections, and the members of the state elections commission to invalidate section 106.08(1)(d) under the first and fourteenth amendments. In May 1978 the district court issued a decision invalidating the statute on constitutional grounds.

Dade Voters for a Free Choice is a political committee organized and registered under Florida law to oppose passage of an ordinance that would prohibit smoking in public places; the voters considered this proposal in a countywide referendum election in May 1979. The committee does not support any individual candidate. Contributions to the Dade Voters committee were restricted to one thousand dollars by Fla.Stat.Ann. § 106.-08(1)(e) (West Supp. 1980), which applies

to countywide elections in the same way that section 106.08(1)(d) applies to statewide elections.

In February 1979 Dade Voters and a party desiring to contribute more than the statutory maximum amount sued the secretary of state, director of the division of elections, and members of the elections commission to invalidate section 106.08(1)(e) under the first and fourteenth amendments. In March 1979 the district court relied upon its earlier decision in the Let's Help Florida case to strike down the statute.

II. Federal Jurisdiction and Review.

Appellants in the Dade Voters case raise several contentions questioning federal jurisdiction and review. Appellants first contend that the district court lacked jurisdiction because no

case or controversy existed between the parties. The Supreme Court summarized the test to determine whether a case or controversy exists with regard to first amendment rights in Babbitt v. United Farm Workers National Union, 442 U.S. 289, 99 S.Ct. 2301, 2309, 60 L.Ed.2d 895 (1979):

> When the plaintiff has alleged an intention to engage in a course of conduct, arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he "should not be required to await and undergo a criminal prosecution as the sole means of seeking relief." Doe v. Bolton, 410 U.S. 179, 188, 93 S.Ct. 739, 745, 35 L. Ed.2d 201 (1973).

In Babbitt the Supreme Court allowed a union to challenge the constitutionality of a state statute regulating election procedures, consumer publicity, and

criminal sanctions, even though no elections or prosecutions had yet occurred. The Court said that

> . . . when fear of criminal prosecution under an allegedly unconstitutional statute is not imaginary or wholly speculative a plaintiff need not "first expose himself to actual arrest or prosecution to be entitled to challenge [the] statute." Steffel v. Thompson, 415 U.S. 452 at 459, 94 S.Ct. 1209 at 1216, 39 L.Ed.2d 505. . . . Moreover, the State has not disavowed any intention of invoking the criminal penalty provision against unions that commit unfair labor practices. Appellees are thus not without some reason in fearing prosecution . . .

99 S.Ct. at 2310-11. The Dade Voters committee wanted to receive larger contributions than the statute allowed. The committee had already received a few contributions larger than the statutory maximum, and other potential donors, including the co-plaintiff in this case, indicated that they would make larger contributions if the law allowed them

to do so. The defendants have the statutory duty to enforce the election code. Fla.Stat.Ann. § 106.22-106.27 (West Supp. 1980). They have not disavowed any intention to enforce the statute. On the contrary, counsel for the defendants said that the state would be compelled to begin proceedings against the plaintiffs if the statute is upheld. Record, Vol. III, at 41-42. These facts show that the plaintiffs' fear of prosecution is not imaginary or wholly speculative, and that a sufficient case or controversy exists to establish federal jurisdiction under Babbitt, and under Fifth Circuit cases such as International Society for Krishna Consciousness v. Eaves, 601 F.2d 809, 817-19 (5th Cir. 1979) and Septum, Inc. v. Keller, 614 F.2d 456, 459 (5th Cir. 1980). This conclusion is not contrary to the Second Circuit opinion in

St. Martin's Press, Inc. v. Carey, 605 F.2d 41 (2d Cir. 1979). In St. Martin's Press the court held that no case or controversy existed when a publisher brought a first amendment challenge to enjoin state prosecutors from enforcing a child pornography statute against a book that was outside the scope of the statute, and against which the prosecutors declared they would not enforce the statute. 605 F.2d at 44-45. In contrast to St. Martin's Press, plaintiffs in this case desire to engage in conduct that is in clear violation of a statute which the state has indicated it will enforce against them.

Appellants also contend that the district court should have abstained from hearing this case under principles announced in Younger v. Harris, 401 U.S.

37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971). Younger abstention principles are inapplicable to this case, however, because no state prosecution was pending when the plaintiffs filed suit. Steffel v. Thompson, 415 U.S. 452, 475, 94 S.Ct. 1209, 1223, 39 L.Ed.2d 505 (1974).

Appellants finally contend that the district court should not have issued injunctive relief. A federal court may enjoin state officials from enforcing an unconstitutional statute. Ex parte Young, 209 U.S. 123, 165-68, 28 S.Ct. 441, 456-457, 52 L.Ed. 714 (1908). An injunction is proper in this case because no legal remedy could correct the irreparable injury to plaintiffs' first amendment rights, important for an election only weeks away. See Elrod v. Burns, 427 U.S. 347, 373-74 & n. 29, 96 S.Ct.

2673, 2689-2690, 49 L.Ed.2d 547 (1976) (loss of first amendment rights unquestionably constitutes irreparable injury).

III. First Amendment.

The right to make political contributions is protected under the first amendment as an important freedom of association. Buckley v. Valeo, 424 U.S. 1, 25, 96 S.Ct. 612, 637, 46 L.Ed.2d 659 (1976). In Buckley the Supreme Court struck down federal restrictions upon direct political expenditures in candidacy elections, but upheld similar restrictions upon contributions to a candidate or to a committee supporting a candidate. As a general preface to its decision, the Court explained that contributions required less first amendment protection than did direct expenditures:

> A limitation on the amount of money a person may give to a

> candidate or campaign organization thus involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues.
>
> . . . . .
>
> The overall effect of the Act's contribution ceilings is merely to require candidates and political committees to raise funds from a greater number of persons and to compel people who would otherwise contribute amounts greater than the statutory limits to expend such funds on direct political expression, rather than to reduce the total amount of money potentially available to promote political expression.

424 U.S. at 21-22, 96 S.Ct. at 636.

Even though contributions receive less first amendment protection than do direct expenditures, a state may restrict political contributions only if the state

"demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedoms." 424 U.S. at 25, 96 S.Ct. at 638. The sole governmental interest that the Supreme Court recognized as a justification for restricting contributions was the prevention of quid pro quo corruption between a contributor and a candidate. 424 U.S. at 26-29, 96 S.Ct. at 638-640. The governmental interest in restricting contributions to candidates is substantial because actual corruption resulting from a candidate's dependence upon large individual contributors would undermine the integrity of representative democracy, and even the appearance of corruption that arises from public awareness of the possibilities for abuse would erode confidence in the democratic system. Id.

The state's interest in preventing the actual or apparent corruption of candidates, which the Supreme Court found so compelling in Buckley, does not justify restrictions upon political contibutions in referendum elections. When people elect a candidate, they choose someone to whom they can delegate their political decisionmaking. The people's need to prevent large contributors from improperly influencing this representative decisionmaker is critical. In contrast, when people vote on a referendum proposal, they directly decide the pertinent political issue for themselves. Large contributions for publicity by one group or another do not influence the political decisionmakers--in this case, the voters themselves--except in a manner protected by the first amendment. The distinction

between the state's interest in regulating a candidacy election and in regulating a referendum election was discussed by the Supreme Court in First National Bank of Boston v. Bellotti, 435 U.S. 765, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1976). In striking down a Massachusetts statute that prohibited a corporation from making expenditures or contributions for publicity in a referendum election unrelated to the corporation's immediate business, the Court observed that

> Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections. . . simply is not present in a popular vote on a public issue. To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it: "The Constitution protects expression which is eloquent no less than that which is unconvincing.'. . . We noted only recently that 'the concept that government

> may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment. . ."

435 U.S. at 790, 98 S.Ct. at 1423 (footnotes and citations omitted). This distinction between candidacy and referendum elections has been recognized by several other courts in striking down state restrictions upon contributions for referendum elections. See C & C Plywood Corporation v. Hanson, 583 F.2d 421, 424-25 (9th Cir. 1978) (invalidating Montana law that prohibited corporations from making contributions in a referendum election); Citizens Against Rent Control v. City of Berkeley, 99 Cal.App. 3d 736, 160 Cal.Rptr. 448, 451-55 (Ct. App., 1st Dist. 1979) (invalidating city ordinance that restricted the size of contributions in a referendum election);

Schwartz v. Romnes, 495 F.2d 844, 852-53 (2d Cir. 1974) (New York statute prohibiting corporate expenditures for political purposes must be construed narrowly under first amendment so that corporations may make contributions in referendum elections). With regard to referendum elections, appellants cannot justify the statutory restrictions upon political contributions as a means for preventing corruption.

Appellants also contend that the restrictions upon the size of contributions to a single committee are necessary to promote adequate disclosure about who is financing a campaign. In the absence of these restrictions, appellants contend that corporations and wealthy individuals would mask their participation in a referendum campaign by funneling large sums of money into a

a committee which the public would see only under an innocuous title such as "Let's Help Florida" or "Dade Voters for a Free Choice." Although promoting disclosure of campaign contributors is an important state interest, the restrictions upon political contributions in sections 106.08(1)(d), (e) cannot be justified as disclosure measures because the statutes are not closely drawn to avoid unnecessary abridgement of associational freedoms. These statutes that restrict the amount a person may contribute to a single committee do little to promote disclosure. The primary effect of the statutes is to compel large contributors who support or oppose a referendum issue to form multiple partisan committees, each of which can receive the maximum amount from a single contributor under the statute.

These multiple committees provide no additional disclosure; the public still sees only the innocuous names of the different committees, and not the identities of the underlying contributors.

Florida can and does effectively promote the disclosure of large contritors through measures that are less harmful to first amendment rights. For example, sections 106.03 and 106.07 of the Florida Election Code require political committees to register with the state and to file information about each contribution and contributor throughout the campaign. This information is available to the public and may be published through newspapers and other media. Section 106.143 requires disclosure of the source of payment for all political advertisements and campaign literature. Measures such as these provide adequate

disclosure without directly restricting contributions or other important first amendment rights. See C & C Plywood, 583 F.2d at 425 (rejecting argument that state interest in promoting disclosure justifies prohibition of corporate contributions in a referendum election).

Because the Florida statutes that restrict the size of contributions in a referendum election abridge important first amendment rights and are ill-suited for preventing corruption or for promoting disclosure, we affirm the decision in the court below.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

DADE VOTERS FOR A FREE CHOICE,
a Political Committee and
THE FLORIDA RESTAURANT ASSOCIATION, INC.,

Plaintiffs,

vs. TCA 79-0770

GEORGE FIRESTONE, Secretary of
State of Florida; ELIZABETH B.
CASTOR, Director of Division of
Elections, and WALLACE KING, Chair- ORDER
man of Florida Elections Commission,
ANNE E. KELLY, JAMES W. MATTEWS,
BENJAMIN A. JOHNSON, HELEN K. LESLIE,
JAMES McKILLIPS, and ROBERT J. HUCKSHORN,
Members of the Florida Elections
Commission,

Defendants

This is an action challenging the constitutionality of certain portions of Florida's campaign finance act, Florida Statutes Chapter 106. Plaintiff Dade Voters For A Free Choice is a political committee organized and registered pursuant to Florida Statutes §106.03 for the purpose of opposing passage of a "clean indoor air" ordinance to be presented to

the Dade County, Florida electorate at a special election to be held May 8, 1979; it does not support or oppose the election of any candidate for public office. Plaintiff The Florida Restaurant Association, Inc. desires to contribute money and to make in kind contributions in support of the efforts of Dade Voters For A Free Choice. Defendants are the officials of the State of Florida charged with the responsibility of enforcing the campaign financing laws.

The case is presently before the court for a determination whether to enter a final judgment declaring Florida Statutes §106.08(1)(e) unconstitutional and granting permanent injunctive relief to plaintiffs barring enforcement of said statute. All other issues raised in plaintiffs' complaint are reserved for decision at a later date. Plaintiffs were

granted a preliminary injunction on March 5, 1979. At that time a final hearing on the issues relating to the validity of §106.08(1)(e) was scheduled. The parties subsequently stipulated to waive final argument and to "rely upon their prior written memoranda, prior written and oral argument presented to the Court, and other evidence submitted and stipulated to at the hearing held on March 2, 1979 on the plaintiffs' application for a preliminary injunction."

The statutory provision challenged by plaintiffs provides:

> (1) No person or political committee shall make contributions to any candidate or political committee in this state, for any election, in excess of the following amounts:
>
> . . . .
>
> (d) To any political committee in support of, or in opposition to, an issue to be voted on in a countywide, districtwide, or less than countywide election, $1,000.00.

The complaint alleges that The Florida

Restaurant Association, Inc. wishes to contribute to Dade Voters For A Free Choice in excess of this $1,000.00 cap. In addition, the evidence as stipulated by the parties demonstrates that Dade Voters For A Free Choice has already violated this provision on four occasions by receiving contributions in amounts greatly exceeding the limitation. The plaintiffs therefore possess standing to challenge the restrictions imposed by the statute.

Based upon the evidence and argument adduced at the March 2 hearing, the court concludes that Florida Statutes §106.08 (1)(e) contravenes the First Amendment to the United States Constitution as made applicable to the states by the Fourteenth Amendment. The reasoning behind this conclusion is amply stated in this court's opinion in Let's Help Florida v. Smathers,

453 F.Supp. 1003 (N.D. Fla. 1978), holding invalid Florida Statutes §106.08(1)(d), which imposes a limitation on contributions to political committees supporting or opposing an issue to be voted on in a statewide election. No party to the present action has come forward with a principled reason for treating §106.08(1)(e) differently from §106.08(1)(d), and the court finds that both provisions suffer from the identical constitutional infirmaries. A judgment will therefore be entered declaring §106.08(1)(e) unconstitutional; since plaintiffs have no adequate remedy at law, permanent injunctive relief will also issue.

Accordingly, it is hereby

ORDERED AND ADJUDGED that Florida Statutes §106.08(1)(e) violates the First and Fourteenth Amendments to the Constitution of the United States. Pursuant

to Rule 54(b), Federal Rules of Civil Procedure, it is hereby determined that there is no just reason for delay. The clerk of the court is directed to enter judgment in favor of plaintiffs and against defendants declaring Florida Statutes §106.08(1)(e) to be unconstitutional and permanently enjoining defendants from enforcing against plaintiffs the contribution limitation contained in said statutory provision.

DONE AND ORDERED this 13th day of March, 1979.

WILLIAM STAFFORD
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
FLORIDA TALLAHASSEE DIVISION

DADE VOTERS FOR A FREE CHOICE, a Political Committee, and THE FLORIDA RESTAURANT ASSOCIATION, INC.,

Plaintiffs,

vs. TCA 79-0770

GEORGE FIRESTONE, as Secretary of the State of Florida, et al.,

Defendants.

O R D E R

In this action for declaratory and injunctive relief plaintiffs challenge the constitutionality of certain portions of Florida's campaign finance act, Florida Statutes Chapter 106. Plaintiff Dade Voters For A Free Choice is a political committee organized and registered pursuant to Florida Statutes §106.03 for the purpose of opposing

passage of an anti-smoking ordinance to be presented to the Dade County electorate at a special election to be held May 8, 1979; it does not support or oppose the election of any candidate for political office. Plaintiff The Florida Restaurant Association, Inc. desires to contribute money and to make in kind contributions in support of the efforts of Dade Voters For A Free Choice. Defendants are the officials of the State of Florida charged with the responsibility of enforcing the campaign financing laws.

Presently pending is plaintiffs' application for a preliminary injunction. The injunction is sought solely on the issue of enforcement of the contribution and expenditure limitations contained in Florida Statutes §106.08(1)(e).[1]

A hearing was held on March 2, 1979.

Florida Statutes §106.08(1)(e) provides:

> (1) No person or political committee shall make contributions to any candidate or political committee in this state, for any election, in excess of the following amounts:
>
> > (d) To any political committee in support of, or in opposition to, an issue to be voted on in a countywide, districtwide, or less than countywide election, $1,000.00.

The Florida Restaurant Association, Inc. alleges that it wishes to make a contribution to Dade Voters For A Free Choice in excess of the $1,000.00 cap imposed by this statutory provision.[2] Both plaintiffs contend that this restriction impinges upon First Amendment guarantees made applicable to the states by the Due Process Clause of the Fourteenth

Amendment to the United States Constitution and that its enforcement should therefore be enjoined.

The Fifth Circuit has announced four general prerequisites to the grant of a preliminary injunction: (1) a substantial likelihood that the plaintiff will prevail on the merits; (2) a substantial threat that the plaintiff will suffer irreparable injury if the injunction is not granted; (3) the threatened injury to the plaintiff outweighs the threatened harm the injunction may do to the defendant; and (4) granting the injunction will not disserve the public interest. Knights of the KKK, Realm of Louisiana v. East Baton Rouge Parish School Board, 578 F.2d 1122, 1125 (5th Cir. 1978); State of Texas v. Seatrain International, S.A., 518 F.2d 175, 179 (5th Cir. 1975);

Canal Authority of State of Florida v. Callaway, 489 F.2d 567, 572 (5th Cir. 1974).

Upon consideration of the evidence and argument presented at the hearing, the court concludes that plaintiffs have established a substantial likelihood of success on the merits. This conclusion is well nigh dictated by the rationale of this court's opinion in Let's Help Florida v. Smathers, 453 F.Supp. 1003 (N.D. Fla. 1978), in which Florida Statutes §106.08(1)(d) was held to be violative of the First and Fourteenth Amendments. Like §106.08(1)(e), the subsection involved in Let's Help Florida imposed a limitation on contributions to any political committee supporting or opposing an issue to be voted on by the electorate. The only differences

between the two provisions involve the amount of the limitation ($3,000.00 rather than $1,000.00) and the kind of elections to which the limitation applies (statewide rather than countywide, districtwide, or less than countywide elections). There is no basis in constitutional principle for differentiating between the two, for the identical governmental interests are sought to be furthered and the identical free speech and associational interests are curbed.[3] Accordingly, the findings enunciated in Let's Help Florida are expressly adopted herein as demonstrating plaintiffs' likelihood of success on the merits.

Plaintiffs have also satisfied their burden of proof as to the remaining three prerequisites to preliminary injunctive relief. As was stated in the

order granting the preliminary injunction in Let's Help Florida:

> Having determined that this case involves a deprivation of First Amendment rights the element of irreparable harm to plaintiffs is established. As noted by the Supreme Court, the "loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373 (1976). Conversely, the court perceives no harm to defendants in enjoining enforcement of the questioned provision of the statute. Removal of the contribution limitation as it relates to political committees supporting or opposing an issue in a countywide, districtwide, or less thatn countywide election does not appear to pose any significant threat to the integrity of Florida's election process. Defendants have come forth with no interest served by this statute which would be harmed by a preliminary injunction and elimination of these ceilings may aid in enhancing public awareness of the issues to be decided in the May election. Consequently, the balance of potential harm tips heavily in favor of plaintiffs' First Amendment rights.

> Likewise, the public interest cannot be disserved by allowing unfettered discussion of important issues by promoting the ability of small groups to be effectively heard in the political arena. This is particularly true in a case such as this where there appears to be an absence of any interest sufficiently compelling which has the proper nexus to this statute.

Let's Help Florida v. Smathers, TCA 78-0750 (Order of March 29, 1978), at p. 6.

Thus, all four prerequisites to a preliminary injunction have been met. Although Rule 65(c), Federal Rules of Civil Procedure, conditions the granting of preliminary injunctive relief upon posting of security by the movant, the amount of such security is in the discretion of the court and the court may elect to require no security. Corrigan Dispatch Co. v. Casa Guzman, S.A., 569 F. 2d 300, 302-03 (1978). Defendants have not requested a bond, nor is it

apparent that they will be prejudiced in any manner if plaintiffs are not required to post a bond.

In accordance with the foregoing, it is

ORDERED AND ADJUDGED that plaintiffs' application for preliminary injunction be, and the same hereby is GRANTED, and defendants are hereby enjoined from enforcing the provisions of Florida Statutes §106.08(1)(e) against plaintiffs during the pendency of this litigation.

DONE AND ORDERED this 5th day of March, 1979.

WILLIAM STAFFORD
UNITED STATES DISTRICT JUDGE

FOOTNOTES FOLLOW

FOOTNOTES Dade Voters For A Free Choice v. Firestone TCA 79-0770

1. Plaintiffs' complaint also challenges the constitutionality of the reporting and disclosure requirements contained in Florida Statutes §106.07. Plaintiffs have indicated, however, that they seek no preliminary injunctive relief as to these issues.

2. In addition, the undisputed evidence presented at the hearing establishes that Dade Voters For A Free Choice has already received the following contributions in excess of the amount set by Florida Statutes §106.08(1)(e):

Brown & Williamson Tobacco Corp.	$25,000.00
R. J. Reynolds Tobacco Co.	$47,000.00
Loew's Clearing Corp.	$12,000.00
Philip Morris, Inc.	$60,000.00

See Joint Exhibits 2 and 3.

3. The court cannot concur with defendants' contention that the particular factual situation was crucial to the holding in Let's Help Florida. The issues presented are precisely the same, and defendants' attempt to distinguish Let's Help Florida on the facts is unpersuasive. In addition, the sole governmental interest advanced by defendants here which was not relied on by the defendants in Let's Help Florida - prevention of the perpetration of a

"ruse" upon Dade County voters by out-of-state corporate interest -- cannot withstand constitutional analysis. Defendants argue:

> Defendants submit to this Court that the complete discortion in the presentation of opposition to the [proposed ordinance] to the voters of Dade County is enough to justify the regulation. By organizing as a committee named Dade Voters and pumping huge amounts of funds into a slick advertising campaign, a few companies may be able to convince the populace that their inexhaustable financial reserves are really a groundswell of popular opposition. No longer do the people have control of the system, or can they adequately compete in it. The smaller geographic region, the reasonable limitation involved and the factual consequences presented are valid enough to meet the compelling state interest in this case.

Any concern the State of Florida may have that the voters will be deceived about the identity of the opponents or proponents of an issue is amply served by other statutory provisions requiring public disclosure of the sources of any

contributions. As this court has previously stated, "a contribution ceiling has no relationship to disclosure, while at the same time limiting important associat onal freedoms which are worthy of protection." Let's Help Florida v. Smathers, 453 F.Supp. at 1012.

Defendants also appear to suggest that the State of Florida ought to have the constitutional authority to control the expenditure of large amounts of money by corporate interests in order to "equalize" the arguments on both sides of an issue. This contention must be rejected. "[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment. . . ." First National Bank of Boston v. Bellotti, 435 U.S. 765, 790-91 (1978), quoting Buckley v. Valeo, 424 U.S. 1, 48-49 (1976).

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTICT OF
FLORIDA TALLAHASSEE DIVISION

LET'S HELP FLORIDA, a
Political Committee and
PAUL M. BRUUN,

Plaintiffs,

vs. TCA 78-0750

BRUCE SMATHERS, as Secretary ORDER
of the State of Florida, et al.,

Defendants.

In this action for declaratory and injunctive relief plaintiffs challenge the constitutionality of certain portions of Florida's campaign finance act, Fla. Stat. §106.011 et seq., as amended, Laws of Fla. Ch. 77-175 (1977). Plaintiff Let's Help Florida is a political committee organized and registered pursuant to section 106.03 of the act for the purpose of placing on the November, 1978 general election ballot

a proposal to amend Art. 10§7 of the Florida Constitution, and securing passage of the amendment. Plaintiff Paul M. Bruun is an individual desirous of contributing money in support of the efforts of Let's Help Florida. Defendants are the officials of the State of Florida who are charged with the responsibility of enforcing the campaign financing laws. Presently pending is plaintiffs' application for a preliminary injunction. A hearing was held on March 8, 1978.

Plaintiffs' primary attack[1] is upon Fla. Stat. §106.08(1)(d), which provides:

> (1) No person or political committee shall make contributions to any candidate or political committee in this state, for any election, in excess of the following amounts:
>
> * * *

> (d) To any political committee in support of, or in opposition to, an issue to be voted on in a statewide election, $3,000.00

It is claimed that this restriction impinges on First Amendment guarantees made applicable to the states by the Fourteenth Amendment to the United States Constitution and its enforcement should therefore be enjoined.

In passing on a request for such extraordinary relief this court is constrained to exercise its discretion in accordance with the four-pronged test enunciated by the United States Court of Appeals for the Fifth Circuit. Thus, before a preliminary injunction may be issued it must be demonstrated (1) that there exists a substantial likelihood that plaintiffs will prevail on the merits of the action, (2) that there is

a substantial threat that plaintiff will suffer irreparable injury absent the injunction, (3) that this threatened injury outweighs any potential or threatened harm to defendants, and (4) that such injunction will not disserve the public interest. Canal Authority of State of Florida v. Calloway, 489 F.2d 567, 572 (5th Cir. 1974).

I. Likelihood of Success on the Merits

As noted above, plaintiffs' main constitutional challenge is directed at the $3,000 ceiling on contributions to political committees for the purpose of supporting or opposing an issue which may appear on the ballot in a statewide election. It is beyond question that in thus limiting contributions the statute abridges First Amendment freedoms of political association and,

perhaps to a lesser degree,[2] political expression. Although not absolute, these rights have been recognized as fundamental to our democratic system, and therefore any curtailing governmental activity is subject to strict judicial scrutiny. NAACP v. Alabama, 357 U.S. 449 (1958). Intrusions may be permitted only when the state demonstrates a legitimate and sufficiently compelling interest in the regulation, and the means utilized to promote this interest are calculated to avoid unnecessary interference with these protected rights. Buckley v. Valeo, 424 U.S. 1 (1976). Moreover, the benefits derived from the regulation must clearly "outweigh the loss of constitutionally protected rights." Elrod v. Burns, 427 U.S. 347, 363 (1976) (footnote omitted).

A. Buckley v. Valeo

Although not dealing with the identical issues involved in this case, the decision of the Supreme Court in Buckley v. Valeo, 424 U.S. 1 (1976) is instructive. In that case the Court was asked to invalidate, primarily on First Amendment grounds, limitations on campaign contributions and expenditures in federal elections.[3] The federal law generally sought to impose restrictions on the amount individuals and groups could contribute to candidates and authorized campaign committees as well as a limitation on the total amount which could be contributed during any calendar year. Additionally, expenditures during a calendar year which were made relative to a clearly identified candidate were limited.

As to the campaign contributions the Court found that although such ceilings constituted restraints on rights of association and expression, the governmental interest in preventing corruption and the appearance of corruption brought about by large contributions to candidates was sufficient to justify the limitations. The Court specifically noted the dangers involved in large contributions being given to secure quid pro quo arrangements from current and potential office holders, Buckley, supra at 26-27, but found it unnecessary to discuss other possible government interests in the limitations.

The expenditure limitations, however, were on a different footing. Determining that these ceilings constituted "direct and substantial restraints on the

quantity of political speech," Buckley, supra at 39, the Court was unable to conclude that the interests which served to sustain the contribution limitations had equal application to expenditure limits. The Court found that the limitations were not sufficiently related to the elimination of corruptive influences for the reason that only some large independent expenditures were limited.

As if reading through different glasses, both sides cite Buckley as supportive of their respective positions. Plaintiffs claim that the ceilings contained in section 106.08(1)(d) are in fact limitations on expenditures regardless of the fact that the term "contributions" is used, and under the Buckley ratonale such constraints are impermissible. Defendants, on the other hand,

argue that the ceilings in the statute seek only to regulate contributions much in the manner of the federal act and that there are no "expenditure" limitations contained in the Florida law. Contribution ceilings, they claim have been sustained by Buckley. The court is of the opinion that whether the ceilings are characterized as regulating "contributions" or "expenditures", Buckley offers little comfort to defendants. Buckley does not stand for the proposition that contributions may always be regulated and expenditures may not. Rather, the language of the opinion indicates that under long established constitutional precepts such regulation passes muster only where demonstrated interests of sufficient magnitude are present and the regulation relates to those interests. A

close examination of the interests asserted by defendants indicates that the statute here misses the mark.

B. Compelling State Interest

The first interest alleged by defendants to be served by section 106.08(1)(d) is the avoidance of impropriety and the appearance thereof. While there can be little doubt this rationale would serve to justify limitations on contributions to candidates for political office, the court is hard pressed to understand how such an interest is served by limitations on contributions to political committees for the purpose of supporting or opposing an issue. The potential for corruption in this setting is not readily apparent. The task becomes more difficult when one realizes that an individual who acts alone may spend unlimited sums to support

or oppose an issue, but that same individual may not contribute in excess of $3,000 to an organized political committee espousing the same views in a statewide election. Indeed, there is no limit on what the committee itself may expend save that imposed indirectly by the contribution ceilings. Surely if there is a danger of corruption and undue influence connected with elections relating to issues that danger does not disappear merely because an individual who wishes to spend large sums must do so alone. It is clear, therefore, that this interest in avoiding corruption and undue influence, however, compelling it may be, cannot sustain this regulation because the statute is not sufficiently related to elimination of these evils.

The other interest advanced by defendants as being promoted by this statute appears to relate to equalization of the "political clout" of individuals acting in a collective capacity. If such an attempt at equalization is a permissible objective, the statute is clearly counterproductive. Far from any equalization, section 106.08(1)(d) serves only to stifle effective political expression by limiting the ability of those with limited resources to combine to voice their opinions. Yet, the statute is silent as to the amount those with unlimited resources may expend individually to promote their view. Accordingly, this rationale is likewise insufficient.

Since there presently appears to be no compelling state interest in the

contribution limitations contained in section 106.08(1)(d), and that section clearly impinges on First Amendment freedoms, plaintiffs have demonstrated a substantial likelihood of prevailing on the merits of this action.

Balance of Injuries and Disserving Public Interest

Having determined that this case involves a deprivation of First Amendment rights the element of irreparable harm to plaintiffs is established. As noted by the Supreme Court, the "loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373 (1976). Conversely, the court perceives no harm to defendants in enjoining enforcement of the questioned provision of the statute. Removal of the contribution limitation

as it related to political committees supporting or opposing an issue in a statewide election does not appear to pose any significant threat to the integrity of Florida's election process. Defendants have come forth with no interest served by this statute which would be harmed by a preliminary injunction and elimination of these ceilings may aid in enhancing public awareness of the issues to be decided in the November election. Consequently, the balance of potential harm tips heavily in favor of plaintiffs' First Amendment rights.

Likewise, the public interest cannot be disserved by allowing unfettered discussion of important issues by promoting the ability of small groups to be effectively heard in the political arena. This is particularly true in a

case such as this where there appears to be an absence of any interest sufficiently compelling which has the proper nexus to this statute.

Conclusion

Thus, plaintiffs have established the necessary prerequisites to a preliminary injunction. Rule 65(c), Fed.R.Civ. P., provides:

> Security. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of an officer or agency thereof.

Although this rule conditions the granting injunctive relief upon posting of security by the movant, the amount of such security is in the discretion of

the court and the court may elect to require no security. Corrigan Dispatch Co. v. Casa Guzman, S. A., _____F.2d ____ (5th Cir. 1978). Defendants have neither asked for nor shown the necessity for such a bond and none will be required in this case. In view of the foregoing, it is hereby

ORDERED that defendants are enjoined from enforcing Fla. Stat. §106.08 (1)(d) during the pendency of this litigation.

DONE AND ORDERED this 29th day of March, 1978.

WILLIAM STAFFORD
UNITED STATES DISTRICT JUDGE

FOOTNOTES FOLLOW

FOOTNOTES

1. In the complaint plaintiffs also challenge the constitutionality of the reporting and disclosure requirements contained in Fla. Stat. §106.08.

However, in the memorandum in support of the application for preliminary injunction and at the hearing on that application plaintiffs indicated that they intend to fully comply with those requirements regardless of the outcome of this suit. This action has the effect of making this part of plaintiffs' claim moot and no discussion of its merits is necessary.

2. In Buckley v. Valeo, 424 U.S. 1 (1976), the Supreme Court noted that:

> [A] limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributors's ability to engage in free communication.
>
> A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support....
>
> Given the important role of contributions in financing political campaigns, contribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy. There is no indication, however, that the contribution limitations imposed by the Act would have any dramatic effect on the funding of campaigns and political

> associations. The overall effect of the Act's contribution ceilings is merely to require candidates and political committees to raise funds from a greater number of persons. . .

id. at 20-22 (footnotes omitted). While it may be true that the quantity of communication would not increase with the size of a contribution to a political candidate in an election in which numerous issues are normally addressed, it is not altogether clear that the same result would follow in an election which is to be accepted or rejected by the voters.

3. The lengthy and comprehensive opinion of the Supreme Court dealt with many aspects of the Federal Election Campaign Act which were under attack by the plaintiffs. However, the portions of the opinion covering only the contribution and expenditure limitations are of particular relevance to this case.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

NO. 79-2091

D.C. Docket No. TCA 79-0770

DADE VOTERS FOR A FREE CHOICE,
a political committee, and
the FLORIDA RESTAURANT ASSOCIATION,
INC.,

Plaintiffs-Appellees,

vs.

GEORGE FIRESTONE, Secretary of
State, ET AL.,

Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Florida

Before THORNBERRY, FRANK M. JOHNSON, JR., and HENDERSON, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be, and the same is hereby affirmed.

It is further ordered that Defendants-Appellants pay to Plaintiffs-Apellees the costs on appeal to be taxed by the clerk of this court.

July 11, 1980

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 78-2497
79-2091

LET'S HELP FLORIDA, a Political Committee, and Paul M. Bruun, Plaintiffs-Appellees,

v.

Jesse M. McCRARY, Jr., as Secretary of State of Florida, et al., Defendants-Appellants.

DADE VOTERS FOR A FREE CHOICE, a Political Committee, and the Florida Restaurant Association, Inc., Plaintiffs-Appellees,

v.

George FIRESTONE, Secretary of State of Florida, et al., Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Florida

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ON PETITION FOR REHEARING

(September 10, 1980)

Before THORNBERRY, FRANK M. JOHNSON, JR. and HENDERSON, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

FRANK M. JOHNSON, JR.
United States Circuit Judge

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

CASE NO. 79-2091

DADE VOTERS FOR A FREE CHOICE, a Political Committee and THE FLORIDA RESTAURANT ASSOCIATION, INC.,

Plaintiffs-Appellees,

vs.

GEORGE FIRESTONE, Secretary of State, State of Florida; ELIZABETH B. CASTER, Director of Division of Elections, State of Florida, and WALLACE KING, Chairman of Florida Elections Commission, ANNE E. KELLY, JAMES W. MATTHEWS, BENJAMIN A. JOHNSON, HELEN K. LESLIE, JAMES McKILLIPS, and ROBERT J. HUCKSHORN, Members of the Florida Elections Commission,

Defendants-Appellants.

NOTICE OF INVOCATION OF CERTIORARI JURISDICTION

NOTICE IS HEREBY GIVEN that Defendants-Appellants in the above cause invoke the certiorari jurisdiction of the United States Supreme Court from the judgment and opinion filed July 11,

1980, rehearing denied September 10, 1980.

Respectfully submitted,

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